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E-filed October 25th, 2006

6
7 UNITED STATES BANKRUPTCY COURT
8
DISTRICT OF NEVADA

9 IN RE:
10 SCOTT K. GREENE.

CASE NO. BK-N-05-54727-GWZ
CHAPTER 7

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**MOTION FOR ORDER
AUTHORIZING SALE OF REAL
PROPERTY FREE AND CLEAR OF
LIENS AND ENCUMBRANCES;
PAYMENT OF SALES COMMISSION**

Debtor.

Hearing Date: November 21, 2006

Hearing Time: 10:00 a.m.

Time reqd.:

Anabelle Savage, Chapter 7 trustee ("Trustee"), requests an order of the court authorizing her to sell real property free and clear of liens and encumbrances and to pay a real estate commission to Dickson Realty. This motion is made in accordance with 11 U.S.C. §363(b), (f) and (m) as well as F.R.Bankr.P. 2002, 6004 and 9014. This motion is supported by the separately filed Declaration of Anabelle Savage. Finally the Trustee requests that the court take judicial notice of the papers on file in this case.

FACTS

1. This case was filed on October 15, 2005 and the Trustee was appointed to administer the estate.
2. Debtor, Scott Greene ("Debtor"), listed real property located at 450 Alimosa Dr., Sparks, NV on Schedule A filed with this bankruptcy petition with a value of \$240,000.00 (the "Property"). The Property consists of approximately 67.11 acres of bare land located in Spanish Springs Nevada. The Property is encumbered by a deed of trust securing a promissory note in an amount in excess of \$77,000.00 in favor of Sun West Bank ("Bank").
3. Although the Property was initially scheduled by the Debtor as exempt up to its

1 entire value, creditor, Rena Wells ("Wells"), objected to such exemption. After the hearing of
 2 the Wells objection, the court entered an order on July 27, 2006 ("Exemption Order") limiting
 3 the amount of the Debtor's exemption to \$125,000.00. Docket #54. The Debtor thereafter
 4 filed a motion to stay the Exemption Order and filed an appeal of the same. The court denied
 5 the Debtor's motion for stay by order entered on September 28, 2006 ("Stay Order"). Docket
 6 #86. The Stay Order also permitted the Trustee to sell the Property for the estate.

7 4. On August 24, 2006 the court entered an order approving the Trustee's application
 8 to employ Darlene Stanoff (" Stanoff") of Dickson Realty ("Dickson") to sell the Property.
 9 Dockef #64.

10 5. Stanoff's efforts resulted in the Trustee receiving and accepting an offer to purchase
 11 the Property for \$370,000.00. The offerors are David and Lois McClenahan
 12 ("McClennahans"). A true and correct copy of the Offer and Acceptance Agreement, Vacant
 13 Land ("Offer") is attached to the Trustee's Declaration as Exhibit "A" and incorporated herein
 14 by reference.

15 6. The Offer contemplates the close of escrow to be no later than November 30, 2006.

16 7. The Offer anticipates a commission of 6% of the sale price. In this case the
 17 McClenahans are also represented by Harvey Fenell of Dickson. It is not known whether the
 18 commission is to be spit equally between the agents. In any case, if the sale closes a 6%
 19 commission on \$370,000 would be \$22,200.00.

20 8. To the best of the Trustee's knowledge the McClenahans, as purposed purchasers,
 21 have no connection to the Debtor or to the Trustee and are good faith purchasers for value.

22 . **LEGAL DISCUSSION**

23 Sales of property, other than in the ordinary course of business, may be approved only
 24 after notice and hearing. §363(b). Sales free and clear of liens and encumbrances may be
 25 approved only if the Trustee can satisfy at least one of five conditions as set forth in §363(f).
 26 Here, the sale proposed by the Trustee satisfies §363(f)(3) because the sale price exceeds the
 27 value of the encumbrances securing the obligation to the Bank. Moreover, the Trustee does not
 28 dispute the obligation owing to the Bank and proposes that its beneficiary demand be paid at
 the close of escrow.

29 Based upon the location and condition of the Property, the Trustee believes that the
 30 proposed sale price of \$370,000.00 reflects the actual value in the market place. In addition,
 31 the Trustee believes that the proposed sale commission of 6% is within the range of

1 commissions charged by brokers handling similar sales in the geographic area of Sparks,
2 Nevada. Finally, the Trustee requests a finding that the McClenahans are good faith
3 purchasers for value entitled to the safe harbor provisions of §363(m).

4 **CONCLUSION**

5 Based upon the foregoing, the Trustee requests an order authorizing sale of the
6 Property in its "as is, where is" condition to the McClenahans for \$370,000.00 cash and
7 authorizing the Trustee to execute such documentation as is required to consummate the
8 subject sale. The Trustee further requests that the order approving the sale also authorize
9 payment of a real estate commission in the amount of 6% of the sale price and that the order
10 waive the 10 day stay as permitted by F.R.Banker.P. 6004(g). Finally, the Trustee requests
11 that distribution of the remaining proceeds of the sale, after payment of the costs of sale and
12 the Bank, be determined by the court at the hearing of this motion.

13 .
14 DATED this 24th day of October, 2006.

15 COPE & GUERRA
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18 William D. Cope, Esq. Attorney
19 for Trustee, Anabelle Savage
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am over the age of 18 years, and that on this 25 day of October, 2006, I deposited for mailing, e-mail and/or electronically filed in Reno, Nevada, a true and correct copy of the foregoing MOTION to the following:

U.S. Trustee
300 Booth Street, Ste. 2129
Reno, NV 89509

Anabelle Savage
P.O. Box 6179
Reno, NV 89513

John White, Esq.
335 W. First St.
Reno, NV 89503

Jeff Hartman
510 W. Plumb Ln., Ste. B
Reno, NV 89509

Michael Lehners
429 Marsh Ave.
Reno, NV 89509

DAVID RANKINE
12 W TAYLOR ST
RENO, NV 89509

DATED this 25th day of October, 2006.

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Zayra Garcia-Arroyo
Employee of COPE & GUERRA